LIBRARY
REME COURT, U. S.

FILED
APR 20 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 1347

B. L. SUHL and MARGARET WIERMAN,
Defendants and Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondents and Appellee Below.

Petition for Writ of Certiorari to the Supreme Court of the United States After Decision and Judgment of the United States Court of Appeals for the Ninth Circuit, After a Jury's Verdict of Guilty and Judgment and Sentence of the United States District Court of the Northern District of California, Northern Division.

HARRY A. PINES,
Attorney for Petitioners.

HARRY A. PINES and
UTLEY & HOUCK,
By ERNEST R. UTLEY,
417 South Hill Street,
Los Angeles, Calif. 90013,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Relevant Proceedings in the United States District Court	2
Statement Showing the Issues Involved Under the Allegations in the Indictment	3
Concise Statement of the Grounds on Which the Jurisdiction of This Court Is Grounded	6
Statutes and Rules of Court Involved in This Proceeding	7
Concise Statement of Questions Presented for Review	11
Concise Statement of the Facts	13
Gibson's Check Transaction	18
Yates Check Transaction	19
False Testimony of Robert Goodwin	20
Further Contradictions	25
Other Contradictory Statements of Goodwin	26
Testimony of Other Bank Employees	28
Testimony of Sherwood Morrill an Examiner of Questioned Documents	29
Other Documentary Evidence	29
Summary of Argument	30

INDEX TO APPENDICES

Page

Appendix No. 1. Opinion of the United States Court of Appeals for the Ninth Circuit 1

Appendix No. 2. Testimony of Margaret Wierman 22

Appendix No. 3. Excerpts From Robert Goodwin's Testimony 49

Appendix No. 4. Petitioners' Brief in Support of Petition for a Writ of Certiorari 87

TABLE OF AUTHORITIES CITED

Cases	Page
Kann v. U.S., 323 U.S. 88, 65 S. Ct. 148	12
Lyda v. United States, 321 F. 2d 788	11
Miller v. Pate, 386 U.S. 1, 87 S. Ct. 785	30
Napue v. People of the State of Illinois, 360 U.S. 264, 79 S. Ct. 1173	30
Rules	
Rules of the Supreme Court, Rule 38(5)	7
Rules of the Supreme Court, Rule 38(5)(b)	7
Statutes	
United States Code, Title 18, Sec. 371	2, 6, 8
United States Code, Title 18, Sec. 656	2, 5, 9
United States Code, Title 18, Sec. 1341	2, 3, 6, 10
United States Code Annotated, Title 28, Sec. 1254	7
United States Code, Title 28, Sec. 1254(1)	7
United States Constitution, First-Fifth Amendments	8
United States Constitution, Fifth Amendment	11

IN THE

Supreme Court of the United States

No. .....

..... Term 1968

B. L. SUHL and MARGARET WIERMAN,

Defendants and Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents and Appellee Below.

Petition for Writ of Certiorari to the Supreme Court of the United States After Decision and Judgment of the United States Court of Appeals for the Ninth Circuit, After a Jury's Verdict of Guilty and Judgment and Sentence of the United States District Court of the Northern District of California, Northern Division.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Ninth Circuit affirming judgment of the U. S. District Court for the Northern District of California, Northern Division, in a criminal case wherein United States of America is plaintiff and B. L. Suhl and Margaret Wierman, *et al.*, are defendants in Case No. 14194, wherein the defendants are charged by indictment with four counts of mail fraud,

violation of Title 18 U.S.C. Section 1341, one count of conspiracy, violation of Title 18 U.S.C. Section 371, and one count 18 U.S.C. Section 656, misapplication of bank funds.

Relevant Proceedings in the United States District Court.

1. On December 4, 1964, an indictment was returned by the Grand Jury charging B. L. Suhl, Margaret Wierman, Ronald B. Vaughn and Richard Gibson with violations of Section 1341 of Title 18 U.S.C. (mail fraud), Counts One and Two against B. L. Suhl, Margaret Wierman and Ronald B. Vaughn. Counts Three and Four against B. L. Suhl, Margaret Wierman and Richard Gibson.

Count Five charges B. L. Suhl, Margaret Wierman and Ronald B. Vaughn with a violation of Section 656 of Title 18 U.S.C., and Count Six charges all four defendants with conspiracy (18 U.S.C. 371) to violate Section 1341 of Title 18 U.S.C.

2. Pleas of Not Guilty were entered as to all defendants. The indictment was dismissed against defendant Gibson before trial.

3. The case went to trial on May 18, 1965 against Suhl, Wierman and Vaughn.

4. The trial was concluded on June 17, 1965 and a verdict of Guilty was returned against each of the defendants on trial on each of the counts with which they were charged [R, Tr. p. 1270].

5. Motions for a new trial as to each defendant in due time, and also for a judgment of acquittal, and the matter continued to November 1, 1965 [R. Tr. p. 1335] for report on probation.

6. On November 1, 1965, the Court pronounced judgment on each of the defendants [R. Tr. p. 1335] and an appeal was immediately taken to the United States Court of Appeals for the Ninth Circuit.

Statement Showing the Issues Involved Under the Allegations in the Indictment.

Counts One and Two of the Indictment charge B. L. Suhl, Margaret Wierman and Ronald B. Vaughn with a violation of Section 1341 of Title 18 U.S.C. (Mail fraud). Said charge alleges in part that the defendants did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations by means of a "check kite" scheme whereby false credit would be obtained by exchange and passing of worthless checks between two banks, to wit, the Bank of America, Manchester-Vermont Branch, Los Angeles, California, and the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California. It is alleged that as a part of the scheme and artifice to defraud, checks were drawn on the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, Los Angeles, California and caused to be deposited to the account of Ronald B. Vaughn at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, at times when the account of the said B. L. Suhl contained insufficient funds to cover said checks, as the defendants then and there well knew; and,

As a further part of the scheme and artifice to defraud, checks were drawn on the account of Ronald B. Vaughn at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, and

caused to be deposited to the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, Los Angeles, California, at times when the account of the said Ronald B. Vaughn contained insufficient funds to cover the checks, as the defendants then and there well knew.

It is further alleged that as a further part of the scheme and artifice to defraud, the above defendants utilized the span of time involved in the normal passage of mails between Covelo and Los Angeles, California, to accomplish delay in the posting of checks to the said respective accounts, and it is alleged that the defendants caused personnel of the bank to place said checks in an envelope in an authorized depositary for mail matter, which said envelope and its contents were delivered by the Post Office Department of the United States, according to the directions thereon, to the Frontier Bank of Covelo in the State and Northern District of California, and a similar charge with respect to the delivery of checks by the Frontier Bank which were to be delivered to Los Angeles, California.

Counts Three and Four of said Indictment charge B. L. Suhl, Margaret Wierman and Richard Gibson with similar offenses between the same banks, and in particular, Paragraph 3 of Count Three (p. 4 Indictment) alleges:

> "As a further part of the scheme and artifice to defraud, checks drawn on the account of RICHARD GIBSON at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, *were caused to be deposited to the account of B. L. SUHL at the Bank of America, Manchester-Vermont Branch, Los An-*

geles, California, at times when the account of the said RICHARD GIBSON contained insufficient funds to cover the checks, as the defendants then and there well knew." [Emphasis ours].

Count Five alleges that at all times mentioned therein, the Frontier Bank of Covelo was a State Bank and was insured by the Federal Deposit Insurance Corporation under Certificate No. 1335 dated February 18, 1957, and charges that the defendant Margaret Wierman, who was then president of the Frontier Bank of Covelo, California, B. L. Suhl and Ronald B. Vaughn committed a violation of Section 656 of Title 18 U.S.C., in that during the period between September, 1963 through December, 1963, said president Margaret Wierman did willfully misapply monies, funds and credits of said bank, and monies and funds entrusted to the custody and care of said bank, by willfully authorizing, directing and causing checks drawn on the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, to be deposited to the account of Ronald B. Vaughn at the Frontier Bank of Covelo, then and there well knowing that said checks did not represent sufficient funds in said B. L. Suhl's account, on the following dates and in the following respective amounts:

DATE	AMOUNT
9-20-63	46,711.00
10-28-63	67,500.00
11-14-63	80,000.00
11-18-63	55,000.00
11-22-63	86,700.00
11-27-63	55,000.00
12-20-63	125,000.00
12-23-63	70,000.00

and thereafter on each said date did willfully and knowingly authorize, direct and cause a withdrawal in the same respective amount to be made from the account of Ronald B. Vaughn at said Frontier Bank of Covelo, then and there well knowing that there were insufficient funds in said account to cover said withdrawal.

The said acts of Margaret Wierman were aided, abetted, counselled and induced by B. L. Suhl and Ronald B. Vaughn.

Count Six of the Indictment charges all four defendants with conspiracy (18 U.S.C. 371) to violate Section 1341 of 18 U.S.C.

Four overt acts are alleged, which will be mentioned in detail hereinafter [Clk. Tr. p. 00001].

The Indictment was dismissed against Richard Gibson, and the remaining defendants were convicted on all counts with which they were charged. (See Jury's verdict as to each defendant in Clerk's Transcript on Appeal, Page Nos. designated as 000054 and 000065, and the judgment and sentence of the Court [See Clk. Tr. pp. unnumbered]) was pronounced on November 1, 1965.

Concise Statement of the Grounds on Which the Jurisdiction of This Court Is Grounded.

1. The decision of the United States Court of Appeals was filed on February 6, 1968 (See Appendix No. 1 for the decision).

2. A petition for a rehearing was filed on the 6th day of March, 1968.

3. The petition for a rehearing was denied on the 18th day of March, 1968.

4. An application for a stay of judgment was filed and granted on March 26, 1968.

5. A request that the entire record in said case be certified to the Supreme Court was filed on the 25th day of March, 1968.

6. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Statutes and Rules of Court Involved in This Proceeding.

28 U.S.C.A., Section 1254, Courts of appeals; certiorari; appeal; certified questions, provides in part, as follows:

> "Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Title 28 U.S.C.A., Page 66, Supreme Court Rule 38, Paragraphs 5 and 5(b), provides:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local deci-

sions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

U.S.C.A., Constitution, Amendments 1 to 5, at page 297, states:

"AMENDMENT V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Title 18 U.S.C.A., Section 371, Conspiracy to Commit Offense or to Defraud United States, provides as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in

any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 of imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Title 18 U.S.C.A., Section 656, Theft, embezzlement, or misapplication by bank officer or employee, provides as follows:

"Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities instrusted to the custody or care of such bank, or to the custody or care or any such agent, officer, director, employee or receiver, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount embezzled, abstracted, purloined or misapplied, does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; and "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation."

Title 18, U.S.C.A., Section 1341, Frauds and swindles, provides:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Concise Statement of Questions Presented for Review.

1. Whether the Fifth Amendment to the Constitution tolerates a conviction obtained in the United States District Court by the knowing use of false evidence, and whether or not, absent such evidence, there is any evidence showing Margaret Wierman to have been guilty of any of the crimes charged.

2. Whether or not such testimony may be used in the conviction of B. L. Suhl, and whether or not such testimony is prejudicial.

3. May a conviction of a defendant be sustained upon the uncorroborated testimony of an accomplice where it appears that said accomplice has committed willful perjury upon some of the material and vital issues in the case, or where the testimony of the accomplice is incredible and unsubstantial.

4. What constitutes incredible and unsubstantial testimony of an accomplice.

5. The United States Court of Appeals erred in holding that the testimony of Robert Goodwin was not incredible and unsubstantial (See Court's Decision, Appendix No. 1) in the light of prior decisions of the Appellate Court and more particularly, *Lyda v. United States,* 9 Cir., 1963, 321 F. 2d 788, 794-95.

6. Insufficiency of the evidence as against Wierman on all counts, and since she is the only officer of the bank involved, must not Count 5 be dismissed as to all defendants.

7. Insufficiency of evidence to warrant conviction on Counts 3, 4, 5 and 6 as against all defendants and

fatal variance between allegations and proof in that none of the Gibson checks were deposited in Suhl's account as alleged, but were all made payable to stock brokers for stock, or to some other person or corporation and cashed or deposited by such persons in their own bank account, all of said checks having been paid in full upon presentation to the Covelo bank.

8. Whether or not the Gibson checks came within the purview of this Honorable Court's decision in *Kann v. U.S.*, 323 U.S. 88; 65 S. Ct. 148, and whether an instruction based upon the *Kann* case should not have been given pertaining to the Gibson check transactions.

9. Improper cross-examination of the defendants, over objection, upon issues foreign to the issues involved in the indictment, and more particularly to the alleged unlawful use of funds of Security and American.

10. Improper cross-examination of defendants, over objection, with reference to the truthfulness of certain findings of fact [Govt. Ex. 55 for identification], made by a Referee in Bankruptcy which were not final and then pending on appeal, and which findings, etc. were reversed by the Court of Appeals for the Ninth Circuit on the 28th day of June, 1965 and only a few days after the jury's verdict herein. That none of the alleged unlawful use of funds was proven as a fact, but all questions propounded were highly prejudicial to the rights of the defendants.

11. That the Government erred in its attempt to prove that the H. Keith Yates transaction was a crime, over objection, and in the government's attempt to show that it was a part of the general alleged conspiracy.

Concise Statement of the Facts.

Obviously, in a concise statement of an extended trial, such as the one here involved, only a small portion of the evidence can be mentioned; yet, we shall endeavor to relate an understandable story in as few words as possible.[1]

B. L. Suhl, Margaret Wierman and Ronald B. Vaughn were tried and convicted of all counts in the indictments.[2] Vaughn did not appeal.

Suhl and Wierman owner a majority (80%) of the stock of Security Currency Services, Ltd., a California corporation, hereinafter referred to as "Security" and all of the stock of American Security Currency, Ltd., an Arizona corporation, herinafter mentioned as "American" and doing business in many other states, but not in California. Both of these corporations were engaged in the money order business, and while neither of the companies were involved in the matetrs alleged in the indictment, each is frequently mentioned and the funds of each were deposited in the Bank of America, Manchester-Vermont Branch, Los Angeles, California, and in the Frontier Bank of Covelo, California, which is a small town located in a remote section of Mendocino County, California, about 30 miles from Ukiah. The majority of the stock in the Frontier Bank was purchased by Suhl and Wierman in 1961, and Wierman left her employment at Security and moved to Covelo, where she became president of the bank and continued in that capacity until some time in 1964 [R. Tr. p.

---

[1]We shall quote from certain of the important evidence in Appendix so that a clearer understanding may be had.

[2]Suhl is the son of Wierman, and Vaughn is the husband of the daughter of Mrs. Wierman's husband by a former marriage.

203].[3] Suhl remained in Los Angeles where he was financially interested in and operated Bench Sales, Inc. Suhl was not a director or officer of the bank at any time.

Mrs. Wierman had no prior banking experience and Robert Goodwin[4] who had prior banking experience was employed as cashier of Frontier Bank in 1962 where he remained until 1964 [R. Tr. p. 202].

Both Suhl and Vaughn admit the issuance of the checks with which they are charged, but deny any criminal intent. Each check involved was paid by each of the banks upon presentation, except the last check in the sum of $62,000.00 which was returned at Suhl's request [R. Tr. p. 921, line 5] and the money was wired to the Covelo bank to pay the same. Neither bank suffered any loss [R. Tr. p. 445, line 18, p. 14, line 4].

Suhl requested Vaughn to deposit certain of his checks to Suhl's personal account in the Bank of America above mentioned, and also requested Gibson, who was a close friend and airplane pilot for Suhl, to write certain of his checks drawn upon the Covelo bank account of Gibson and payable to various stock brokers with whom Suhl was purchasing stock in 1963, and also requested Gibson to sign some checks, in blank, to be used for the same purpose [R. Tr. pp. 556-557]. Suhl had purchased heavily in Royal Properties stock and in

---

[3]Reference to the Reporter's Transcript is made because there is yet no printed record filed with the United States Court of Appeals.

[4]Robert Goodman was a witness for the government, and the only witness in the entire case who involved Mrs. Wierman with the alleged offenses charged in any way. He was an accomplice, and is here charged with having deliberately testified falsely in an effort to involve Mrs. Wierman.

1963 [R. Tr. p. 789] he had sixty or seventy thousand shares of said stock.

He had been travelling back and forth to the home office of Royal Properties in Phoenix, Arizona, because the stock was failing in price and he was very concerned about losing the money he had invested. He bought more stock in an effort to protect the price and he borrowered money for that purpose. He testified [R. Tr. p. 790] that he borrowed money from the Bank of America, Community Bank of Huntington Park, Bank of La Jolla, Bank of Los Angeles, Fleming Brokerage Co., and from personal friends, including Paul Luce and Mr. Kerstin, who later bought the bank; from Roy Lewis and Richard Gibson [R. Tr. pp. 790-833]. Suhl had several brokerage accounts and had issued quite a number of checks, and his account was overdrawn; the bank called him and advised him of an overdraft of some forty five or forty six thousand dollars [R. Tr. p. 844]. That is when he first asked Ronnie Vaughn to write him a check.

Suhl asked Vaughn to deposit his check for $46,-711.00 (the check of Sept. 20, 1963) in his account at the Bank of America, and he promised Vaughn he would take care of it, that he had money coming from the east and he would wire funds to handle it, that it would be taken care of.

Suhl took care of it by causing a check of $46,711.00 to be deposited in Vaughn's Frontier bank account, and the Suhl check was paid upon presentation at his bank on 1/10/64 [R. Tr. p. 445, line 18]. There were no more check transactions between Suhl and Vaughn until about October 21, 1963.

On or about October 21, 1963, Suhl asked Vaughn to issue another check for $67,500.00 [R. Tr. p. 850, line 13], for the purpose of covering another overdraft. He became so embroiled with the Royal Properties situation that he suddenly found himself in an overdraft situation at the Bank of America [R. Tr. p. 851, line 9]. He was involved in a number of negotiations attempting to sell assets. He said he had to get off of "this terrible margin bind that I was in, through the purchase of the stock", and he thought that each day one or another of the sales would close and that he would be able to wire the money to Covelo to cover [R. Tr. p. 851, line 15].

Thereafter, checks passed between them through the months of November and December, and possibly one or two in January, sometimes the amounts increasing or decreasing as shown by the checks which are in evidence and mentioned in the indictment and in the evidence. In each instance the checks were paid by each bank upon presentation to the bank on which it was drawn, except that the last check of $62,000.00 was returned at the suggestion of Suhl [R. Tr. p. 921, line 5] and he wired the funds to the Frontier Bank to cover, and it was paid on Jan. 10, 1964 [R. Tr. p. 445, line 18].

Neither Suhl nor Vaughn informed Mrs. Wierman of the passing of any of the above checks [R. Tr. p. 865, line 14] except when Vaughn told Mrs. Wierman on November 22, 1963 that Suhl had asked him to write a check.

It is denied that Margaret Wierman participated in any way in either of these transactions, or even had knowledge thereof, except what she may have learned

from a conversation with Vaughn on November 22, 1963. The testimony covering this conversation is set forth in Appendix No. 2 to the effect that while she was in Los Angeles on the date of the assassination of President Kennedy, Vaughn told her that Suhl had asked him to write a check; that she called her son and according to Suhl, his mother told him that Vaughn had informed her that he had asked Vaughn to issue a check against his account in Covelo, and she wanted to know if it was true and if so, why. Suhl told her that he had gotten into a jam with Royal Properties, the brokerage houses were threatening to sell him out, and that he was in a short term bind, and that he would have it taken care of the next day or the day following, that he had money coming in and she shouldn't worry about it at all, that he definitely had it taken care of, that his mother was very unhappy about the stock situation and losses suffered; that her comment was, "Why don't you stick to what you know instead of trying to play someone else's game?" She told Suhl she wasn't going to get into another situation where Ronnie Vaughn would be carrying an account at the Frontier Bank which was in reality his own account, and that she would not be a part of it. "That the Banking Department had asked her to close Suhl's account, and that if he was going to have Ronnie write checks it might as well be my account there and she would resign. She said that unless it was stopped and that he wouldn't have Vaughn write any more checks, she wouldn't go back to the bank at all." Suhl told her he had money coming in and he was sure that would be the end of it.

The same day she also called Goodwin at Covelo and asked him why he would okay such a check without first consulting her, and Goodwin advised her that he had

worked it out with Suhl. (See Appendix No. 2 and pages of Reporter's Transcript therein given.) Goodwin admits Mrs. Wierman called him [R. Tr. p. 344, line 11, to p. 345, line 1].

Gibson's Check Transaction.

The Gibson transaction was in no way connected with the Vaughn transaction. It was a separate arrangement between Suhl and Gibson, whereby Suhl requested Gibson to permit him to use his checks to purchase stock, and agreed to see that the same were paid upon presentation.

Stock was purchased with the Gibson checks [R. Tr. p. 791; See also Ex. 49] and all of the Gibson checks were made directly to stock brokers, such as E. F. Hutton & Co., Harbison & Henderson, M. S. Walker, Fleming Brokerage Co., etc., except one of Gibson's checks payable to Bank of America in the sum of $50,000.00 was cashed at the Bank of America and the proceeds were used by Suhl to purchase stock [R. Tr. p. 794, line 25]. Also, there was a small check of Gibson's made payable to Wetzel [R. Tr. p. 795] for a trip to Lucerne to survey the situation to see if a branch bank should be established at Lucerne. Gibson was a stockholder in the bank and had made some money on his stock. Gibson agreed with Suhl to pay Wetzel.

Suhl signed Gibson's name to two checks [R. Tr. p. 796]. Suhl testified that he called Gibson and asked him to meet Suhl at the brokerage firm, and Gibson informed Suhl that he was tied up and told Suhl "You can sign my name as well as I can," so Suhl signed those two checks and Gibson made no complaint whatsoever.

All of the Gibson checks were paid upon presentation, with the possible exception of two small ones which were paid upon being presented a second time. None of them were ever deposited in Suhl's bank account, as alleged in the indictment.

There were no other check activities between Suhl and Gibson.

There is also evidence of Gibson acquiring some of the stock purchased with these checks, although Suhl reimbursed Gibson in full for all checks advanced by him [R. Tr. p. 792; R. Tr. pp. 556-596; R. Tr. p. 780, line 12].

[See also testimony of Milton Wilks from E. F. Hutton & Co., R. Tr. p. 778].

Yates Check Transaction.

The H. Keith Yates transaction was entirely separate from the other transactions and had no relation whatever to either the Suhl-Vaughn or Suhl-Gibson transactions [R. Tr. pp. 594-608].

Suhl had agreed to secure for Yates a loan of $11,000.00 at the Frontier Bank. He had Yates sign an application for a loan, a note, and a signature card for a checking account [R. Tr. p. 599, line 10] and sent these to his mother at Covelo. Yates, feeling that the loan would be honored, wrote a check for $10,800.00.

Mrs. Wierman rejected the loan because Yates lived out of the bank's loaning area and when Yates' check arrived at the bank, there was no bank account. Upon the arrival of the check, Suhl was informed and immediately caused the Bank of America to wire the Frontier Bank $11,000.00 to be deposited to Yates' account,

which was so deposited [R. Tr. p. 80]. Suhl also later secured a loan for Yates at the Metropolitan Bank in Hollywood [R. Tr. p. 601, line 13; also p. 602, line 16].

False Testimony of Robert Goodwin.

Robert Goodwin was employed as cashier of the Frontier Bank at Covelo, California in November, 1962 and served in this capacity to July, 1964 [R. Tr. p. 202, line 22]. He also was named as Vice President in January, 1964 [R. Tr. p. 203, line 5].

According to his own testimony, Robert Goodwin was an admitted accomplice to any possible crime committed, having been deeply involved with the making of every check signed by Suhl or drawn upon his account, even to the extent of signing Suhl's name to some of the checks [R. Tr. p. 211, lines 1-4].

Goodwin testified first with respect to the check of September 20, 1963 for $46,711.00 [Beginning R. Tr. p. 213, line 21]. He testified that when it came in for payment he approached Mrs. Wierman [R. Tr. p. 214, line 22].

> "She said she would contact Mr. Suhl, which she called him on the telephone in my presence, and then she produced a check, signed it and gave it to me to deposit in the account of R. B. Vaughn for this large check that had been drawn by him." [R. Tr. p. 215, lines 1-6].

The deposit slip was prepared by Goodwin [R. Tr. p. 220, lines 24-25] for the $46,711.00 check and shows date September 20, 1963 [R. Tr. p. 221, line 2]. See also [R. Tr. p. 211, lines 5-25] where he definitely says that Mrs. Wierman signed this check.

There had been a mistrial in this case where Goodwin had admittedly testified a few days before that after telling Mrs. Wierman that this check for $46,711.00 came in, that "She then obtained funds from Suhl in Los Angeles by way of wire transfer." (Emphasis ours). [See R. Tr. p. 287, lines 1-11].

Upon defendant's motion, they received from the Government a written statement given to the Federal Bureau of Investigation on or about June 3, 1964 [R. Tr. p. 233, line 18] which was Ex. 40-A [Beginning R. Tr. p. 287, line 10] wherein the witness Goodwin stated:

> "Shortly thereafter Mr. O'Kane of the State of California Banking Authority advised me to close this account. I did as instructed, and as soon as it was closed, large checks began coming through which were written on the account of Ronald V. Vaughn. This was in September, 1963. Ronald Vaughn was Mrs. Wierman's son-in-law and was employed by Bud Suhl in Los Angeles. I believe he is currently employed by Suhl in the United Bench, 5840 Southwestern Avenue, Los Angeles.
>
> "The first few of these large checks which came in drawn on Vaughn's account were N.S.F. checks, inasmuch as his balance was not sufficient to cover them. Margaret Wierman wasn't there, so I held them in the rejected check register for several days. I didn't want to bounce them because I knew Vaughn was her son-in-law and I didn't want a repeat of the chewing out I had received from Suhl.
>
> "I recall holding a written check to be charged on 9-20-63 to Vaughn's account in the amount of $46,711.00 in the rejected check register on 9-18

and 9-19-63 until receiving funds to cover this amount on 9-20-63. This check actually came in on 9-18-63 but wasn't posted to the account until 9-20-63.

"When Margaret Wierman returned she had a book of blank checks which had already been presigned by Bud Suhl. These checks were universal checks and could be written on any bank.

"From there on whenever a large check would come in to be charged against Ronald Vaughn's account I would be informed of this by the girl who was handling the incoming cash letter. I knew Vaughn did not have a large enough balance in his account to cover this check, because he never carried balances this large. So I would take this check to Margaret Wierman."

"Now, did you make that statement concerning those checks to the F.B.I. Agents at that time? A. I did." [R. Tr. p. 290, line 19, to p. 292, line 4].

Goodwin testified that Wierman signed Suhl's name to checks on one or more than one occasion [R. Tr. p. 211, line 15]. At other times Suhl had signed the checks and these would be handed to Goodwin and he would fill in the date and the amount and the payee [R. Tr. p. 211, lines 22-25]. Goodwin says these checks would be handled to him by Wierman [R. Tr. p. 212] and there were times when Goodwin signed Suhl's name, himself [R. Tr. p. 212, lines 19-25]. Goodwin, under forceful cross-examination, finally admitted that he, himself, signed this check. Because of the importance of this admission we quote: [R. Tr. p. 316, lines 4-21].

"Mr. Lally: Q. I would like you, sir, to look at the lower corner of this exhibit and tell me what

initial is in the lower corner below the signature? A. That is my initial.

Q. And the check is filled out, is it not, in your handwriting? A. It is.

Q. Including the signature, is it not? A. Yes.

Q. Is that not correct, sir? A. It is.

Q. In other words, that little 'r' signifies on that check that you put the signature on there, does it not? The same as on all the other checks you told me? A. That is correct.

Q. All right. This check is dated 9-20-63 and it is in the amount of $46,711, is it not? A. It is."

At [R. Tr. p. 462, line 21, to p. 463, line 1] Goodwin said:

"A. This is the first check which was used to credit the account of R. B. Vaughn on 9/20 of '63, and I had a conversation with Margaret Wierman about this. This is a traced signature, and I can't recall how that happened, but at any rate the conversation that transpired over this was between Margaret Wierman and B. L. Suhl, and not myself."

And, at [R. Tr. p. 464, line 15, to p. 465, line 3] Goodwin said:

"Mr. Utley: Q. Did I understand you to say that you discussed the writing of this $46,711 check against the account of B. L. Suhl in his presence with Margaret Wierman? A. No.

Q. Was B. L. Suhl there? A. No.

Q. Did you have any discussion with Margaret Wierman about writing that check in the presence of B. L. Suhl? A. No.

Q. And you said that the signature had been traced. Did you trace it? A. I believe I did. I forget—I think so, I don't know. This first has been retraced by pencil and then re-done in ink. I don't recall, I couldn't recall that."

Goodwin testified on direct examination [R. Tr. p. 236, line 18] that Exhibit I is a check dated 12-2-63 in the sum of $131,996 and that the payee is the Frontier Bank and the maker B. L. Suhl, that he did all of the writing on this check except the signature, and that Margaret Wierman signed B. L. Suhl's name on the check in his presence [R. Tr. p. 238, lines 9-11] to cover two checks which had come in on that day [R. Tr. p. 238, lines 14-24].

On cross-examination beginning [R. Tr. p. 281, line 14, to pp. 282 and 283] Goodwin testified positively that Mrs. Wierman signed Suhl's name to the check, Exhibit I, he said that she was in the bank on December 2, 1963, the day he filled out the check, and when his attention [R. Tr. p. 283, line 4] was called to the fact that she was in a lawyer's office in Los Angeles on December 2, 1963 and participated in the sale of the assets of Security and American, Goodwin stated that he would be surprised to learn that because "She couldn't be in two places", that "She was in the Frontier Bank" and that she signed the signature to Exhibit I on that day in front of him on "December the 2d".

In connection with this exhibit it will not be overlooked that Mrs. Wierman denied signing Suhl's name to any of these checks or having anything to do with any of them, or having knowledge thereof, and of her testimony that she was in Los Angeles on December 2, 1963

at the office of Ernest E. Johnson [R. Tr. pp. 768-777] in connection with the sale of the money order companies, and testifying to certain receipts which she produced received by her for gas etc. while in Los Angeles; [R. Tr. p. 1099, line 15] also, the testimony of Sherwood Morrill [R. Tr. pp. 868, 876] the handwriting expert, who testified that the signature of B. L. Suhl on Exhibit I or none of the other checks shown him was written by Mrs. Wierman.

See also testimony of Ernest E. Johnson [R. Tr. p. 772, lines 9-14] which establishes the fact that Mrs. Wierman was in his office in the afternoon of December 2, 1963 attending a conference held between 1:45 p.m. and 8:00 p.m.

Further Contradictions.

Goodwin, under cross-examination [See R. Tr. p. 348, line 14] admits having previously testified that the check [Ex. D-W] which is dated 11/22/63, was given to him by Marge Wierman there in the bank; that when one of Vaughn's checks came in he walked over to her desk and told her that he had a Vaughn check, and that she reached in her drawer and gave him the check on November 22, 1963. He had just previously testified on cross-examination [See R. Tr. p. 344] that Mrs. Wierman was not present in the bank at all on that day; that he had talked to her on that day by long distance telephone from Los Angeles, and there is no question about it now, "none whatsoever".

Mrs. Wierman testified [R. Tr. p. 1085, line 1] that on November 22, the day of the assassination of President Kennedy, she was at the home of Mr. and Mrs. Richards in Los Angeles. That that was the day

that Vaughn had talked to her about Suhl having requested him to write a check and Mrs. Wierman on the same day called Goodwin, talked to him and protested that he would honor such a check without consulting her, and she also called her son on the same day and rebuked him concerning the check which Vaughn mentioned to her.

Other Contradictory Statements of Goodwin.

Goodwin testified to meeting Suhl at the Mark Hopkins Hotel in connection with some stock in October, 1963 [R. Tr. p. 412, line 18]. He was also there in connection with efforts being made to establish a branch bank, and he was there to meet the Superintendent of Banks [R. Tr. p. 413].

Suhl stayed at the Mark Hopkins, and Goodwin had lunch with him and met Mr. Dalton.

Goodwin denied that at the time he saw Suhl at the Mark Hopkins, Suhl gave him any signed checks. Goodwin was shown Exhibit "T-W" for identification, which was a Suhl check cashed at the Mark Hopkins, dated October 19, 1963, but Goodwin says that does not help him to fix the day in October he met Suhl.

Then Exhibit "U-W" was marked for identification, which was a check of Suhl's dated October 21, 1963 and payable to Mr. Dalton for $1968.00 [R. Tr. p. 416].

Goodwin's attention was called to the fact that the printed number on the check given to the Mark Hopkins [Ex. "T-W"] was 4075, and that the check payable to Dalton was numbered [Ex. "U-W"] 4085 [R. Tr. p. 417, lines 23-25]. That Exhibits A, B, C, D and E [R. Tr. p. 416, line 20; p. 417, line 9] were

printed numbers from "79 to 83" in between the checks written to Mark Hopkins and to Mr. Dalton; that the checks [Exs. A, B, C, D and E] are all filled out in Goodwin's handwriting [R. Tr. p. 418] and were dated on different dates from 11-5-63 to 11-27-63, yet Goodwin denies that he received these checks from Suhl in San Francisco when they met at the Mark Hopkins. He says these checks were sent to him by Margaret Wierman [See also R. Tr. beginning p. 483, line 10].

Suhl testified that he took these checks [Exs. A, B, C, D and E], from his checkbook at the Mark Hopkins, after he had written Check No. 4075 to the hotel, signed them and gave them to Goodwin after he had written the check to Mark Hopkins and before he gave Dalton Check No. 4085 in the sum of $1,968.00 for stock [R. Tr. p. 835, line 7, to p. 836, line 11]. Goodwin's attention was called to the fact that Exhibits, A, B, C, D and E were all printed checks of B. L. Suhl, with printed numbers from "79 to 83" and that the Suhl check for $1968.00 payable to Dalton was dated October 21, 1963 and was No. 4085; he nevertheless held to his statement that Mrs. Wierman mailed these checks to him.

The above testimony of Goodwin attempting to involve Mrs. Wierman is that which we contend and urge is clearly willful perjury, and is incredible and unsubstantial on its face and does not and cannot sustain a judgment of conviction against Mrs. Wierman.

Testimony of Other Bank Employees.

Anna Ballentine, Jeanne Robertson and Anna Mae Croteau [R. Tr. pp. 90, 106 and 128] all called by the government as witnesses, and all employees of the Frontier Bank, either as bookkeepers or tellers, testified with relation to the Vaughn and Gibson accounts at the bank. None of said witnesses involved Mrs. Wierman in any way. They always talked with Robert Goodwin and he always directed them and gave them instructions.

Tom Luther was called by the government as a witness and gave certain testimony which was stricken.

The witness said he saw some checks in Mrs. Wierman's desk which had the signatures of Suhl and Vaughn on them [R. Tr. p. 145, line 10] which obviously were checks or money order checks of Security which required these two signatures, and which were used by the bank in the transfer of company funds.

So the only evidence which in any way involves Mrs. Wierman is that of Goodwin, which clearly shows that he attempted to involve Mrs. Wierman with the signing of a check which he later admits he, himself, signed, and also with signing of other checks which the handwriting expert, Suhl and Mrs. Wierman, all testify that she did not sign, supported with the further evidence of Mr. Johnson that Mrs. Wierman was in his office on December 2, 1963, the date one of the questioned checks was issued, and by Goodman's own later admission that Mrs. Wierman called him from Los Angeles on November 22, the date another questioned check was issued, plus all the receipts, etc. which Mrs. Wierman offered showing that she was in fact in Los Angeles on the questioned days.

Testimony of Sherwood Morrill an Examiner of Questioned Documents.

Sherwood Morrill, an examiner of questioned documents who has been with the California State Bureau of Criminal Identification for over 31 years [R. Tr. pp. 868 and 869] examined the check dated December 2, 1963, Exhibit "I" and the Exhibit "J" [R. Tr. p. 870, line 12, and p. 872] and [R. Tr. p. 873, line 4, to p. 875, line 4] as well as the other checks which Goodwin testified Mrs. Wierman signed, and Morrell testified that Mrs. Wierman did not, in his opinion, sign any of the checks identified by Goodwin as having been signed by Mrs. Wierman.

Other Documentary Evidence.

Mrs. Wierman was away from Covelo and in Los Angeles on many days which Goodwin testified to her being in Covelo. She also established this by rather convincing proof in the form of charged gasoline tickets, receipts for purchases at Los Angeles stores, hotel bills, telephone calls and similar documentary proof of her presence in Los Angeles, including the days upon which Goodwin claimed she was in Covelo signing Suhl's name to checks [R. Tr. beginning p. 1082]. The many receipts produced by Mrs. Wierman fully support Mrs. Wierman's testimony that Goodwin deliberately testified falsely aout her presence in Covelo on many important dates.

Summary of Argument.

We respectfully urge that the testimony cited above clearly shows that Robert Goodwin was the only witness who involved defendant Margaret Wierman in any way; and that his testimony was clearly false in relation to certain alleged activities of Margaret Wierman. Therefore, the conviction of Margaret Wierman cannot stand under the "due process" clause of the Fifth Amendment of the Constitution, and under the decisions of this Honorable Court in *Miller v. Pate,* 386 U.S. 1, 87 S. Ct. 785; *Napue v. People of the State of Illinois,* 360 U.S. 264, 79 S. Ct. 1173, and other decisions of this Honorable Court cited in our brief herein, which is shown in Appendix No. 4. See also our brief, Appendix No. 4, in support of our contentions upon other issues involved.

Respectfully submitted,

HARRY A. PINES,
Attorney for Petitioners.

HARRY A. PINES and
UTLEY & HOUCK,
By ERNEST R. UTLEY,
Of Counsel.